



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTOR, ADVISORY, INSOLVENCY AND QUALITY
DIRECTORS, COLLECTION AREA OPERATIONS

FROM: Frederick W. Schindler **/S/ Frederick W. Schindler**
Director, Collection Policy

SUBJECT: Disclosure of Return Information to Probation Officers

This memorandum provides interim guidance regarding the disclosure of return information to U.S. Probation Officers. This memorandum revises and clarifies Internal Revenue Manual (IRM) 5.1.5.20, *Disclosure of Return Information to the Probation Officer*.

When IRM 5.1.5 was revised in September 2006, a provision was added prohibiting Advisory and other SB/SE Collection employees from disclosing information directly to U.S. Probation Officers. If contacted directly for information, these employees were instructed to advise the probation officer that the information would be provided to Criminal Investigation for the required coordination with the Disclosure Officer and the Assistant United States Attorney as appropriate.

The prohibition on disclosing information directly to probation officers is inconsistent with Internal Revenue Code (IRC) § 6103(h)(4), which permits such disclosures if certain requirements are met. Additionally, along with the establishment of single points of contact in Advisory to serve as liaisons for probation cases, the elimination of the prohibition on direct disclosures will make the process of reporting noncompliance with IRS-related conditions of probation more efficient. Accordingly, IRM 5.1.5.20(2) will be revised to remove this prohibition, and, as set forth below, to clarify the situations in which return information may be provided to probation officers.

Disclosure of returns and return information to a probation officer for purposes of informing the court of any noncompliance during a defendant's probationary period is permitted under IRC § 6103(h)(4) under the following circumstances:

- Information on Return(s) must relate to a taxpayer convicted of a criminal tax violation.
- A U.S. Probation Officer must be charged with the responsibility of determining whether such taxpayer is complying with the terms of probation that relate to the Internal Revenue Laws.
- Information on return(s) are limited to those years specified in the conditions of probation issued by the court, or to the conviction years and those years for which the taxpayer is placed on probation.
- Disclosure of the returns and return information would not identify a confidential informant or seriously impair a civil or criminal tax investigation.

Thus, where compliance with IRS-related conditions of probation in a criminal tax case is at issue, information regarding the years specified in the conditions of probation may be disclosed by the Advisor directly to the probation officer. Information about other tax years generally may not be disclosed without the taxpayer's written consent unless the information is material for the court's consideration in revoking or extending probation or supervised release. If there are any questions as to whether the taxpayer was convicted of a criminal tax violation, request a copy of the Judgment and Commitment Order or other document from probation which clearly sets forth the conditions of probation and the offense under which the taxpayer was convicted.

In probation cases where an Advisor issues an Other Investigation (OI) to the field, the revenue officer assigned to the case may communicate directly with the probation officer as long as proof of the above required circumstances for disclosure under IRC § 6103(h)(4), or a written consent to disclosure, has been provided. The revenue officer should coordinate with the Advisor to ensure that direct communications with the probation officer are appropriate and to keep the Advisor informed of the nature of the communications. In probation cases where an OI has not been issued to the field, any direct communications with probation officers by SB/SE Collection employees should be limited to the single points of contact for probation cases in Advisory.

In cases in which the taxpayer was convicted of a non-tax related crime, the IRS will only disclose taxpayer information if presented with a written taxpayer consent, such as a Form 8821, Tax Information Authorization. If the only information needed is verification that a taxpayer has not filed tax returns, instruct the probation officer to use Form 4506-T, which has a check box for requesting Verification of Nonfiling. Form 8821 may be used to obtain taxpayer consent in both tax and non-tax cases. However, ensure that the form has been filed with the appropriate IRS office within 120 days after the date it is signed by the taxpayer.

Publication 4799, Common Questions and Answers Regarding Interactions between the U.S. Probation Office and the Internal Revenue Service in Supervision Cases, has been issued to provide information to probation officers regarding IRS procedures in probation

cases. The publication provides additional information on how probation officers can obtain the information they need to determine a taxpayer's compliance with IRS-related conditions of probation.

Please ensure that this information is distributed to all affected employees within your organization. If you have any questions concerning this memorandum, please feel free to contact me, or a member of your staff may contact Delores Dillmann, Program Analyst, Collection Policy.

cc: Chief, Disclosure
Chief, Criminal Investigation
Director, Fraud/BSA